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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/837,056	04/18/2001	Roger P. Hoffman	P/2-93	9175

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EXAMINER	
PLUCINSKI, JAMISUE A	
ART UNIT	**PAPER NUMBER**
3629	

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	01/25/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary	Application No.	Applicant(s)	
	09/837,056	HOFFMAN, ROGER P.	
	Examiner	Art Unit	
	Jamisue A. Plucinski	3629	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *31 October 2006*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-12 and 14* is/are pending in the application.

4a) Of the above claim(s) *1-8* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *9-12 and 14* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

2. Claims 9-11 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Abecassis (5,291,395) in view of Westbury et al. (6,873,963).

3. With respect to Claim 9: Abecassis discloses the use of a method for storing samples comprising the steps:

a. Providing identification numbers to each sample (Column 2, lies 47-53 and Column 3, lines 44-47);

b. Storing the sample (Column 9, lines 11-19);

c. Storing information about samples (column 3, lines 52-57); and

d. Sending samples to customer (column 9, lines 11-19) along with information about samples (As stated above, in Column 3, lines 37-53, Abecassis discloses the samples have information such as identification and color information printed on the carrier which contains the samples, therefore the examiner considers this to mean information about the samples is sent along with the samples).

4. Abecassis discloses that the samples can be mailed from a warehouse, however fails to disclose tracking delivery of the samples from a facility where it is stored to a final destination.

Westbury discloses the use of a shipment tracking analysis and reporting system, that tracks a shipment to its final destination (Column 2, lines 43-53). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Abecassis to include the tracking function of Westbury, in order to provide estimated arrival times for shipments and to evaluate performance of suppliers and carriers (See Westbury, column 2).

5. Abecassis disclose the database storing information for each sample, and whenever a user receives the same (the examiner considers this to be tracking of the samples that are stored, Column 3, lines 29-37), Abecassis also discloses the use of a warehousing system with stores the samples (Column 9, lines 11-19). However, Abecassis does not explicitly disclose informing a company when samples need to be replenished in the facility. While Abecassis does not disclose informing a company when samples need to be replenished in the facility, Official notice is taken that informing a supplier of low inventory in order to the inventory to be replenished is old and well known. When a store or a retailer is out of stock of an item, the retailer must contact the supplier to order more items, therefore notifying the supplier to replenish the inventory. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to inform a company when the samples need to be replenished. One would have bee motivated to inform a company when inventory levels are low, so that the inventory does not run out ad become out of stock.

6. With respect to Claim 10: Westbury discloses estimating the estimated times of arrival of shipments (See abstract).

7. With respect to Claim 11: Westbury discloses the tracking system tracks shipments and notifies each party in the shipping transaction of tracking data, such as estimated time of arrival, (Column 3, lines 37-48).

8. With respect to Claim 14: Abecassis discloses a brochure is sent to the customer, which the examiner considers to be collateral material (column 3, lines 53-66 in further support see Column 8, lines 54-67).

9. Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Abecassis (5,291,395) and Westbury et al. (6,873,963) in further view of Maggard et al. (6,021,362).

10. With respect to Claim 12: Abecassis discloses storing information about the samples in a database, but does not specifically disclose that information containing when the sample is no longer viable. Maggard discloses the use of the items containing expiration dates of the samples, i.e. how long they are viable, (Column 11, lines 49-53). It would have been obvious to one having ordinary skill in the art at the time the invention was made, to modify Abecassis to include expiration dates of the samples, as disclosed by Maggard, so that expired or outdated samples are not being dispensed or given to consumers (See Maggard, Columns 11 and 12).

Response to Arguments

11. Applicant's arguments filed 10/31/06 have been fully considered but they are not persuasive.

12. First it should be noted that Applicant's response seems to copy and past the examiner's last office action into the response with the applicant's comments dispersed throughout, without

any indication of which sections are the office action and which sections are the applicant's comments. For future correspondence, if the applicant wishes the respond in this form, the examiner suggest either bolding or italicizing the responses of the applicant to clearly define which sections are which.

13. It should also be noted, that whereas the applicant did not amend the claims, a copy of all the claims including the identifiers should be submitted with each reply, even if none of the claims are amended. Due to the fact that the applicant did not submit any claims with this response, the examiner is considering the claims submitted on 5/16/06 as being the current set of claims.

14. With respect to Applicant's arguments with regards to the Official Notice: The examiner has made official notice that informing a supplier of low inventory in order to be replenished is old and well known in the art. The applicant is now arguing that the official notice is being taken for replenishing finished products and that there is no official notice in notifying the supplier that their samples are running in short supply. The examiner has made the statement that official notice is taken for notifying a supplier of low inventory. The inventory or products of Abecassis are samples from a warehouse, therefore, the combination of the official notice and Abecassis, produces notifying a supplier when samples (which are inventoried in a warehouse) are running low. Therefore whereas there is no official notice in notifying the supplier that their samples are running in short supply, the combination of official notice and Abecassis teach this limitation, therefore arguments are considered persuasive.

15. With respect to Applicant's arguments that Column 9, lines 11-19 of Abecassis, does not teach that the samples are sent to the customer along with information about the samples: The

examiner had cited previously in the claim, information is printed on a carrier of which the sample is attached to. Then Column 9, lines 11-19 teach physically sending the customer a sample. Therefore information that is printed on the carrier is sent along with the sample, and information about the sample is sent to the customer along with the samples. The examiner has further detailed out the rejection to more clearly show that Abecassis anticipates this claim limitation.

16. With respect to Applicant's argument with the tracking system of Westbury: The applicant has stated that "In the present invention no such delivery times are being predicted", however Claim 10 of the instant application, claims exactly that. The applicant is arguing that there is no teaching or any understanding in the art that there is a problem with not tracking of samples, therefore there is no teaching to combine references. Samples, are merely a type of inventory, which is stored and delivered to customers. The prior art of record, discloses there is a need to track products from inventory through delivery, samples are form of products, therefore the motivation to combine reference lies in Westbury, who discloses a need to track products, Abecassis discloses products (which happen to be samples). Therefore, the arguments are not considered to be persuasive, there is sufficient motivation, and the rejection stands as stated above.

17. With respect to Applicant's argument that Column 3, lines 53-66 does not disclose that a brochure is sent to a customer. However, it is stated in lines 59-66 the use of a brochure. Furthermore, Column 8 discloses the use of the brochure sent to the customer as well.

18. With respect to Applicant's argument that the expiration dates of Maggard do not have to do with how long they are viable, but that a vendcode number expires: The claim limitation

states "determining based on information received from said company when a sample is no longer viable". As stated before, viable is defined as something that is capable of working, functioning or developing adequately, the vendcode expires, therefore the sample cannot be handed out, therefore considered not to be functioning adequately, therefore the examiner considers this to mean after the vendcode expires, then the item it is vending to no longer be viable. As stated in the final rejection, the word viable does not indicate that the sample has to be a "living" sample. As explained above, viable means it is capable of functioning adequately. Therefore a sample of a wall covering can have a viability, or expiration date, for example when the pattern is not discontinued, therefore once the pattern has been discontinued, then the sample is no longer viable. Therefore the examiner considers the combination of Maggard with Abecassis to disclose this claim limitation, and rejections stand as stated above.

Conclusion

19. This is a request for continued examiner of applicant's earlier filed claims on 5/16/06. All claims are drawn to the same invention filed on 5/16/06 and has already received an action claims as written previously. The request for continued examination does not attempt to amend the claims, therefore the claims could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the earlier application. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action after an RCE, in this case. See MPEP § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no, however, event will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jamisue A. Plucinski whose telephone number is (571) 272-6811. The examiner can normally be reached on M-Th (5:30 - 4:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Weiss can be reached on (571) 272-6812. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Jamisue Plucinski
Patent Examiner
Art Unit 3629